

PAYMENTS FOR CERTAIN SURVIVORS OF ARMED FORCES MEMBERS AND
FEDERAL CIVILIAN EMPLOYEES KILLED WHEN 2 UNITED STATES HELI-
COPTERS WERE SHOT DOWN OVER IRAQ IN APRIL 1994

JULY 29, 1999.—Committed to the Committee of the Whole House on the State of
the Union and ordered to be printed

Mr. SMITH of Texas, from the Committee on the Judiciary,
submitted the following

REPORT

[To accompany H.R. 456]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill
(H.R. 456) for the relief of the survivors of the 14 members of the
Armed Forces and the one United States civilian Federal employee
who were killed on April 14, 1994, when United States fighter air-
craft mistakenly shot down 2 United States helicopters over Iraq,
having considered the same, reports favorably thereon with amend-
ments and recommends that the bill as amended do pass.

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The amendments are as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. PAYMENT.

(a) **PAYMENT AUTHORIZATION.**—The Secretary of the Treasury shall pay, out of funds not otherwise appropriated, \$100,000 to the survivor, or collectively the survivors, of each of the 14 members of the Armed Forces and the one United States civilian Federal employee who were killed on April 14, 1994, when United States F-15 fighter aircraft mistakenly shot down two UH-60 Black Hawk helicopters over Iraq.

(b) **SURVIVOR STATUS.**—

(1) **MEMBERS OF THE ARMED FORCES INSURED BY SGLI.**—In the case of a member of the Armed Forces described in subsection (a) who was insured by a Servicemembers' Group Life Insurance policy (issued under chapter 19 of title 38, United States Code), a survivor of such member for the purposes of subsection (a) shall be any person designated as a beneficiary on the individual's policy.

(2) **INDIVIDUALS NOT INSURED BY SGLI.**—In the case of a member of the Armed Forces described in subsection (a) who was not insured by a Servicemembers' Group Life Insurance policy (issued under chapter 19 of title 38, United States Code) or the civilian Federal employee described in subsection (a), a survivor of such member or employee for the purposes of subsection (a) shall be any person determined to be a survivor by the Secretary of the Treasury using the provisions of section 5582(b) of title 5, United States Code.

SEC. 2. LIMITATION ON TOTAL AMOUNT OF PAYMENT.

Not more than a total of \$1,500,000 may be paid to survivors under section 1.

SEC. 3. LIMITATION ON ATTORNEY FEES.

Notwithstanding any contract, no representative of a survivor may receive more than 10 percent of a payment made under section 1 for services rendered in connection with the survivor's claim for such payment. Any person who violates this section shall be guilty of an infraction and shall be subject to a fine in the amount provided in title 18, United States Code.

SEC. 4. REPORT.

Not later than 6 months after the date of the enactment of this Act, the Secretary of the Treasury shall transmit to the Congress a report describing the payments made under section 1.

Amend the title so as to read:

A bill for the relief of the survivors of the 14 members of the United States Armed Forces and the one United States civilian Federal employee who were killed on April 14, 1994, when two United States helicopters were shot down over Iraq, so as to provide those survivors with payments similar to the payments already made by the Department of Defense to the survivors of foreign nationals killed in the same incident.

PURPOSE AND SUMMARY

H.R. 456 would make \$100,000 payments to each of the survivors of the Americans who were killed on April 14, 1994, when two United States helicopters were shot down over Iraq, so as to provide those survivors with payments similar to the payments already made by the Department of Defense to the survivors of foreign nationals killed in the same incident.

BACKGROUND AND NEED FOR THE LEGISLATION

In the Spring of 1991, the United States and 12 other countries began Operation Provide Comfort, an emergency relief effort to assist Kurds and other ethnic groups in northern Iraq. That operation secured an area of Northern Iraq in which Iraqi aircraft were prohibited from entering—a no-fly zone, and established transit camps within that area for the return of people who had fled from

the Iraqi army. Air forces from several of the participant countries conducted frequent air operations within the no-fly zone.

On April 14, 1994, two American Blackhawk helicopters on a humanitarian mission in the no-fly zone of Iraq were shot down by two American F-15 fighter planes when the helicopters were mistakenly identified as Iraqi helicopters. There were 15 Americans (14 active military and one State Department employee) and 11 foreign nationals aboard the helicopters. There were no survivors.

The Kurd foreign nationals killed in the shootdown were employed by the United States. Therefore, their families received compensation under the Federal Employees Compensation Act. A decision was made by the Secretary of Defense, under authority provided in 10 U.S.C. 127, to provide compensation beyond those benefits that when combined with their FECA benefits would total \$100,000. The foreign military families received an *ex gratia* payment of \$100,000 from the Secretary of Defense with no offset for any other benefits. No such payments was made to the families of the Americans killed in the shootdown.

The law does not provide a mechanism for this type of payment to the American families of active military personnel. The Military Claims Act provides that a claim for personal injury or death is not allowed by or on behalf of U.S. active duty personnel if that injury or death is incident to service. Further, suit by or on behalf of active duty personnel against the Government for damages arising from government action or inaction is precluded because of the doctrine of *Feres v. United States*, 340 U.S. 135 (1950).

Some of the policy concerns expressed by the Departments of Justice and Defense include the need to avoid the adverse effects that tort suits would have on military discipline and effectiveness, the need to avoid judicial interference in military affairs, and the provision by Congress of an exclusive remedy for service members in the form of a comprehensive veterans benefits program.

In regards to the State Department employee, no additional payment beyond the benefits program provided under the Foreign Service Act for State Department employees was offered by the Department of Defense.

The Defense Department has stated that the *ex gratia* payments were made to "convey the United States regret over this unfortunate tragedy." The families of Americans killed have indicated that this reasoning shows a lack of regret for the loss of the lives of their family members and inequitable treatment.

At a 105th Congress hearing, the Department of Defense was asked to provide the Committee with any statutory bar to the Secretary using the authority in 10 U.S.C. 127 to pay American families of victims in this incident. The response from the Department did not indicate that there was any statutory bar to payment.

There has been no other situation where both American government employees (military and civilian) and foreign nationals were killed in the same incident and the Secretary has made *ex gratia* payments to the families of the foreign nationals.

The Committee thoroughly reviewed the arguments put forth by the Department of Defense and Department of Justice concerning need for uniformity of benefits for all Americans serving their country and the setting of a bad precedent that would lead to bills in

the future based on friendly fire incidents before coming to its conclusion.

While respecting the need to provide uniform treatment to all our military and government employees, the Committee found that this standard was compromised by the Secretary of Defense when he made those *ex gratia* payments.

The conclusion of the Committee is that this case is unique because it is the only friendly fire incident where the Secretary of the Defense Department chose to make *ex gratia* payments to the families of the foreign nationals killed in the same incidents with Americans.

This legislative remedy is not based on the circumstances which led to the friendly fire incident. The Committee is providing this remedy based solely on the fact *ex gratia* payments were made from the Secretary of Defense's discretionary funds to the foreign nationals' survivors. The Committee intends that the only precedent set is that if the Secretary provides *ex gratia* payments to survivors of foreign nationals involved in an incident such as this in the future, that survivors of the Americans involved in the same incident be given similar payments by the U.S. Government.

The Defense Department could not provide the Subcommittee with any legal bar to the Secretary making the same *ex gratia* payments to the American families. However, the Department refused to administratively remedy this inequity. Therefore, the Committee believes that in order to make clear that this Government values its own citizens lives at least as much as the lives of foreign nationals, this legislation is an appropriate response to the situation the Defense Department has created.

Summary of Changes in H.R. 456 as Recommended by the Committee

During consideration of this legislation in Subcommittee, a decision was made to modify the title of the bill to more clearly reflect that this relief is being provided because of the payments to the foreign nationals' families, not because of the friendly fire incident itself.

HEARINGS

The Committee's Subcommittee on Immigration and Claims held a hearing on this legislation in both the 105th Congress and the 106th Congress. In the 105th Congress the Subcommittee held a hearing on June 18, 1998. Testimony was received from the Honorable Mac Collins; Eljay B. Bowron, Assistant Comptroller General for Special Investigations, Office of Special Investigations, U.S. General Accounting Office, accompanied by Don Fulwider and Don Wheeler, Deputy Directors, Investigations; Captain Elliott L. Bloxom, Director of Compensation, Military Personnel Policy, Office of Under Secretary of Defense (Personnel and Readiness), Department of Defense, accompanied by Frances Adams, Chief, International Torts Branch, Tort Claims and Litigation Division, Air Force Legal Services Agency; Donald M. Remy, Deputy Assistant Attorney General, Civil Division, Department of Justice; Mrs. Cornelia Bass; Mrs. Georgia Bergmann; and Lt. Col. (Ret.) Robert McKenna.

In the 106th Congress, the Subcommittee held a hearing on May 18, 1999. Testimony was received from the Honorable Mac Collins; the Honorable Mark Udall; Captain Elliott L. Bloxom, Director of Compensation, Military Personnel Policy, Office of Under Secretary of Defense (Personnel and Readiness), Department of Defense; Donald M. Remy, Deputy Assistant Attorney General, Civil Division, Department of Justice; and Mrs. Georgia Bergmann.

COMMITTEE CONSIDERATION

On June 17, 1999, the Subcommittee on Immigration and Claims met in open session and ordered favorably reported the bill H.R. 456 with an amendment by voice vote, a quorum being present.

On July 20, 1999, the Committee on the Judiciary met in open session and ordered reported favorably the bill H.R. 456, as amended by voice vote, a quorum being present.

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 2(l)(3)(A) of rule XI of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

COMMITTEE ON GOVERNMENT REFORM FINDINGS

No findings or recommendations of the Committee on Government Reform Findings were received as referred to in clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 2(l)(3)(B) of House Rule XI is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 2(l)(3)(C) of rule XI of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 456, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 403 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 23, 1999.

Hon. HENRY J. HYDE, *Chairman,*
Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 456, a bill for the relief of the survivors of the 14 members of the United States Armed Forces and the one United States civilian federal employee who were killed on April 14, 1994, when two United States helicopters

were shot down over Iraq, so as to provide those survivors with payments similar to the payments already made by the Department of Defense to survivors of foreign nationals killed in the same incident.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is John R. Righter, who can be reached at 226-2860.

Sincerely,

DAN L. CRIPPEN, *Director*.

H.R. 456—For the relief of the survivors of the 14 members of the United States Armed Forces and the one United States civilian federal employee who were killed on April 14, 1994, when two United States helicopters were shot down over Iraq, so as to provide those survivors with payments similar to the payments already made by the Department of Defense to survivors of foreign nationals killed in the same incident.

H.R. 456 would direct the Secretary of the Treasury to pay \$100,000 to each of the families of the 14 members of the United States Armed Forces and one federal civilian employee who were killed on April 14, 1994, when a United States fighter aircraft mistakenly shot down two U.S. helicopters over Iraq. CBO estimates that enacting the bill would increase direct spending by \$1.5 million. Assuming enactment late this fiscal year, CBO expects these outlays would occur in fiscal year 2000. (If the bill is enacted by early August, the outlays could occur in fiscal year 1999.) Because the bill would increase direct spending, pay-as-you-go procedures would apply.

H.R. 456 also would require the Secretary of the Treasury to transmit to the Congress within six months of the bill's enactment a report detailing the payments made to the 15 families. Subject to available amounts, CBO estimates the cost of implementing this provision would be negligible.

The CBO staff contact is John R. Righter, who can be reached at 226-2860. This estimate was approved by Paul N. Van de Water, Assistant Director for Budget Analysis.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to Rule XI, clause 2(1)(4) of the Rules of the House of Representatives, the Committee finds the authority for this legislation in the First Amendment of the Constitution.

SECTION-BY-SECTION ANALYSIS

Section 1. Payment

Section 1(a) directs that the Secretary of Treasury will pay, out of funds not otherwise appropriated, \$100,000 to the survivor or survivors of each of the Americans killed in this incident.

Section 1(b) defines who will be considered the survivors of the American killed for purpose of payment under this legislation.

Section 2. Limitation on Total Amount of Payment.

This section states that no more than a total \$1,500,000 made be paid out to the survivors covered by this legislation.

Section 3. Limitation on Attorney Fees.

This section directs that no more than 10 percent of monies received by each survivor may be paid for service rendered by a representative of the survivor. Any individual who violates of this section will be subject to a fine.

Section 4. Report.

This section directs the Secretary of the Treasury to submit a report to Congress within six months after enactment describing the payments made under Section 1.

AGENCY VIEWS

The comments of the Department of Defense on H.R. 456 are as follows:

GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE,
Washington, DC, July 15, 1999.

Hon. HENRY J. HYDE,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: This is to express the views of the Department of Defense on H.R. 456, 106th Congress, a bill, "For the relief of the survivors of the 14 members of the Armed Forces and the one United States civilian Federal employee who were killed on April 14, 1994, when United States fighter aircraft mistakenly shot down 2 United States helicopters over Iraq."

The Department of Defense opposes H.R. 456.

We are concerned that enactment of this bill would create inequities in the treatment of survivors of service members dying on active duty. The downing of the Blackhawk helicopters was a tragic accident. However, we would do a grave injustice to the survivors of other service members who have died in equally tragic circumstances if we establish a precedent whereby survivors of some service members receive extraordinary compensation from the U.S. government simply because the United States provided *ex gratia* compensation to foreign survivors of the accident. In this case, the *ex gratia* payments to the foreign survivors were made due to the unique circumstances of this incident and to convey the United States' regret. It was a humanitarian gesture to retain the trust, good will, and support of our allies who provide their citizens to work with the United States to protect mutual national security interests. The *ex gratia* payments served an entirely different purpose than the survivor benefit package established by law to compensate the families of service members who die on active duty.

The United States provides a comprehensive system of benefits for survivors of military members who die in service. These benefits are extended to the persons who would have relied on the member's income of their economic security. Some of these benefits, such as Dependency and Indemnity Compensation and the Survivor's Benefit Plan, can endure for the lifetime of the survivor and may total in the hundreds of thousands of dollars.

The Office of Management and Budget advises that, from the standpoint of the Administration's program, there is no objection to

the presentation of these views for your consideration and that of the Committee. A similar letter is being sent to the Chairman of the Committee on Armed Services.

Sincerely,

JUDITH A. MILLER.

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